

**RESOLUTION NO. 14-021**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA14-0001 TO  
ALLOW INSTALLATION OF THREE NEW ANTENNAS TO AN EXISTING  
MONOPOLE TOWER AND ASSOCIATED EQUIPMENT PREVIOUSLY APPROVED  
WITH CONDITIONAL USE PERMIT NO. UP1339 LOCATED AT 1000 JACKLIN  
ROAD**

**WHEREAS**, on October 6, 1977, the Planning Commission approved “S” Zone plans for a 22,300 square foot two-story indoor sports facility building, plus parking and landscaping on the 1.14-acre subject site located at 1000 Jacklin Road, Milpitas, CA 95035.

**WHEREAS**, on May 8, 1996, the Planning Commission approved Conditional Use Permit No. UP 1339 for a 60-foot monopole for a wireless telecommunication facility and construction of a 173 square-foot equipment shelter on the north side of the building.

**WHEREAS**, on July 24, 1996, the Planning Commission approved subsequent amendment, UP1352, to allow co-location of two other carriers and construction of second equipment enclosure on the east side of the building. Additionally, on November 18, 1998, the Planning Commission approved Conditional Use Permit Amendment No. UP1339 to allow antenna replacement.

**WHEREAS**, on June 28, 2000, the Planning Commission approved Conditional Use Permit No. 1553 and “S” Zone Amendment to install telecommunication antennas and equipment enclosure.

**WHEREAS**, on May 28, 2003, the Planning Commission approved the “S” Zone amendment for a new 62’-10” tall clock tower located on the west side of the building. The clock tower was proposed to conceal a total of 12 antennas and associated equipment. The clock tower was constructed and operated after the “S” Zone approval.

**WHEREAS**, on September 12, 2012, the Planning Commission approved a Conditional Use Permit No. UP12-0017 and Minor Site Development Permit No. MS12-0034 for removal of three (3) existing panel antennas with three new panel antennas, installation of six (6) new remote radio units, and replacement of existing equipment cabinets for an existing wireless telecommunication wireless monopole.

**WHEREAS**, currently there are five (5) antennas on the 60-foot monopole based on the approvals discussed above.

**WHEREAS**, on April 10, 2013, Alex Orner representing Sprint Wireless Corporation submitted an application pursuant to Section 57 of the Milpitas Zoning Ordinance for a

Conditional Use Permit Amendment, UA14-0001. The project includes the addition of three (3) new antennas with the other existing five (5) antennas, three (3) new Remote Radio Unit (RRU) to control the antenna frequency, and associate equipment in the existing cabinet enclosure on the east side of the building.

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under Section 15301 of the CEQA Guidelines, Existing Facilities. The structure of the monopole tower is existing and the antennas will be installed to the existing tower structure without creating any significant physical change to the environment.

**WHEREAS**, on May 28, 2014, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2:** The project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities since the project proposes to add antennas to a monopole tower that will not create any significant physical change to the environment.

**Section 3:** Conditional Use Permit (Section XI-10-57.04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit Amendment No. UA14-0001:

- a) The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The City is prohibited by federal law from regulating the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of RF emissions to the extent the facilities comply with the Federal Communications Commission's (FCC) regulations concerning such emissions. (47 U.S.C. 332(c)(7)(B)(iv).

The FCC has established guidelines that place limits on human exposure to RF fields generated by personal wireless service facilities. These guidelines have been endorsed by the U.S. Environmental Protection Agency and the Food and Drug Administration. The FCC requires all personal wireless facilities to comply with these guidelines.

The project is not anticipated to create any negative impacts to public health, safety and general welfare because the anticipated radio frequency emissions is within the Federal Communications Commission (FCC) established guidelines for human exposure to Radio Frequency (RF) fields generated by personal wireless service facilities. Sprint is licensed by the FCC to operate specifically within the 2500 MHz frequency bands. The effective radiate power (ERP) for various frequency band are as follows:

- 2500 MHz transmitter combined on site is 2,953 watts

The emission from the proposed facility including other existing carriers is 6.3 % of the FCC's general public limit. The project fall below the most conservative standard for such radio frequency emissions and therefore complies with current FCC regulations. As previously conditioned, the applicant shall install signs to notify people the presence and locations of antennas and their associated equipment

Further, the proposed antenna installation will have minimal visual impacts in that the installation would be blend with the existing antennas to the monopole structure and the associated equipment would be installed in the existing equipment cabinet as required as a condition of approval.

*b) The proposed use is consistent with the Milpitas General Plan, specifically Policy 2.a-G-1 and 2.a-I-3:*

The project is consistent with this finding because the proposed use supports the following General Plan policies:

- Policy 2.a-G-1 Maintains land use program that balances Milpitas's regional and local roles by providing a highly amenable community environment and a thriving regional industrial center.
- Policy 2.a-I-3 Encourage economic pursuits which will strengthen and promote development through stability and balance.

The project promotes a highly amenable community environment by providing and improving alternate telecommunications services for commercial and personal business. The project would encourage economic pursuits that will strengthen and promote development through stability and balance by enabling Sprint to provide improved coverage, which helps promote their service within the City and benefits Sprint customers.

*c) The proposed use is consistent with the Milpitas Zoning Ordinance:*

The previously approved wireless telecommunication facility is in conformance with the Milpitas Zoning Ordinance in terms of land use and development standards. Wireless telecommunication facilities are conditionally permitted uses in the Highway Service Zoning District. The project proposes to mount three additional antennas to the existing monopole tower and associated equipment in the existing cabinet. The project complies with the development standards in terms of land use, setbacks, floor area ratio (FAR), and height.

**Section 6:** The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-021 approving Conditional Use Permit Amendment No UA14-0001 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on May 28, 2014.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on May 28, 2014, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

**EXHIBIT 1****CONDITIONS OF APPROVAL  
SPRINT BAY HILL ATHLETIC CLUB ANTENNA CUP AMENDMENT – UA14-0001****General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this permit. This Conditional Use Permit Amendment No. UA14-0001 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - a. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable,

Permittee shall pay in full the project account balance and establish a remaining balance of twenty-five percent (25%) of the initial deposit.

7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction and use shall comply with all local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, business or use under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on May 28, 2014, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Code. **(P)**
16. Current applicable Building codes shall be 2013 CBC, CMC, CEC, CPC, California Energy Code and 2014 Milpitas Municipal Code, unless updated by City. **(B)**
17. Engineer or Architect licensed in the State of California shall prepare all required plans. **(B)**
18. All new electrical services shall be underground per 2014 Milpitas Municipal Code section II-6-2.02. **(B)**
19. All equipment weighing over 400 pounds shall be seismically anchored and braced per 2013 CBC section 1613.1 and ASCE 7 sec.13.1.4. Permittee shall provide complete structural design calculation (vertical and lateral) and construction details when applying for building permit. Plans and calculation shall be wet signed and stamped by a Civil Engineer in the State of California. **(B)**

(P) = Planning

(B) = Building

(CA) = City Attorney